LABOUR DEPARTMENT

The 25th March, 1981

No. 9(1)81-8Lab/3226.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Good Year India Ltd., Ballabgarh:—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 10 of 1972

between

SHRI PARMOD KUMAR, WORKMAN AND THE MANAGEMENT OF M/S GOOD YEAR INDIA LTD., BALLABGARH

Present:

Shri R. C. Sharma, for the workman.

Dr. Anand Parkash and Shri Jagat Arora, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/2-E-71/369, dated 5th January, 1972 under section 10(i)(c) of the Industrial Disputes Act, for adjudication of the dispute existing between the workman Shri Parmod Kumar and the management of M/s Good Year India Ltd., Ballabgarh. The term of the reference was:—

> Whether the termination of services of Shri Parmod Kumar was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same on 26th June, 1972. The management filed the written statement alleging therein that Shri Parmod Kumar absented himself on 3rd August, 6th August, 8th August and 10th August, 1971 (four days) without any lawful permission or authorisation. Shri Parmod Kumar lost his lien on his appointment as he was deemed to have left the services without giving due notice to the management under clause XV (N) of the Certified Standing Orders of the company. The name of the workman was struck off from the workers muster-roll on 19th August, 1971 after his shift and due intimation of the same was sent to him,—*vide* letter No. LD/391/71, dated 19th August, 1971. The workman was given written warnings on 23rd January, 1970, 17th February, 1970, 9th April, 1970, 15th December, 1970, 2nd March, 1971 and 13th April, 1971 for absenteeism alone but he did not make any improvement at all.

The workman filed his claim statement which also is his rejoinder alleging therein that he was in the services of the management for about three years as a permanent employee in the department No. 51/1/47 and his record of service was absolutely clean. The workman fell sick on 19th August, 1971 and sent his application asking for sick leave through his elder brother accompanied by the medical certificate from the private medical practitioner which was refused by the personnel department and was directed to produce the medical certificate from the E.S.I. On 20th August, 1971, the workman obtained the E.S.I. medical certificate bearing No. 518, Serial No. DA/, 25894 recommending rest for four days and submitted the same to the company but the same was also returned as the same was not needed because the name of the workman had already been removed from the workers muster-roll. The Doctor recommended a further rest of one week and issued a certificate No. A/465822. On 31st August, 1971 the workman was denied to resume duty when he reported for the same. The workman then raised the present dispute when left with no other choice. The workman has further alleged that the management acted in violation of the standing orders No. 22, 8(F), 8(M) and section 17 and even voilated the provisions of section 15(M) of the standing orders under which the

management has passed the order of discharge which could not have been passed under the said section which the workman contents to be illegal and a nullity because this order is against the spirit of section 79(7) of the Factories Act and also voilative of the provisions contained in Punjab Industrial Establishment Casual Leave sick leave, National Festival Holidays Act, 1965 with regard to a resuest for sick leave. He also conroverted the pleas of the management as given in their written statement while retrating his claim that the order of discharge being illegal and unjustified and he is entitled to reinstatement with full back wages and with continuity of service.

The management filed the rejoinder stating therein that the record of service of the workman was not clean as alleged by him and was issued six warnings. Issues were framed on 14th November, 1972 on the pleas of the parties as under:—

(1) Whether Shri Parmod Kumar concerned workman had lost his lien on his job as alleged by the management?

(2) If issue No. 1 is proved whether the Standing Order No. XV(E) is null and void? If so with what effect?

(3) Whether the termination of services of Shri Parmod Kumar was justified and in order? If not, to what relief is he entitled?

The management objected to the appearance of Shri R. C. Sharma and the workman objected to the appearance of Shri K. P. Aggarwal for the management. The objections so raised were ruled out by my learned predecessor Shri O. P. Sharma,—*vide* his order, dated 6th February, 1973. By the order, dated 3rd August, 1973 the interim application for seeking permission to amend the written statement filed by the management was disposed of and the management was allowed to take the plea mentioned in the application subject to the payment of a cost of Rs. 100 and the additional issue was framed on 15th October, 1973, as under:—

Whether the demand the subject-matter of the present dispute was first raised on the management and rejected by it before taking up the matter for conciliation? If not, with what effect?

which was to be treated as preliminary. The workman himself was examined as his own witness on this issue on 9th April, 1974 while the management examined Shri K. P. Aggarwal as their sole witness and closed their case on preliminary issue on 21st May, 1974. The management moved an application for seeking further amendment in their written statement on 21st May, 1974. The workman filed the reply to this application on 23rd May, 1974 and also moved an application for grant of interim relief. On 17th July, 1974, my learned predecessor Shri O. P. Sharma heard the arguments on both these applications and also on preliminary issue and order was reserved. On 19th June, 1975, Shri O. P. Sharma the then Presiding Officer passed an order directing the case to come up on 26th July, 1975 for the production of documents relating to attendance and receipt register before passing an order on preliminary issue. The Presiding Officer Shri Mohan Lal Jain ordered on 25th July, 1975 for the case to be taken up for arguments before him on the preliminary issue on 28th August, 1975. On 14th November, 1975, my learned predecessor decided preliminary issue against the management and the case was adjourned for notices to the parties for 23rd January, 1976. The management was asked to adduce their evidence on 1st February, 1976. On 9th August, 1976, the then Presiding Officer passed an order that if issue No. 1 is proved the workman representative makes a concession that the reference shall be treated as bad in law and there shall be no need of framing any other issue regarding the reference being incompetent. The management examined Shri P. D. Vermani as MW-2 on 9th August, 1976. Shri K. P. Aggarwal, MW-1 recalled was examined on 9th November, 1976 and the management

closed their case on the same date. The workman was asked to lead his evidence on 14th December, 1976. The workman examined Dr. Ishwar Kaur, Medical Officer, E.S.I. Dispensary No. 1, Faridabad as WW-2, Shri Raghu Nath Rai, Private Medical Practitioner as WW-3, on 14th December, 1976. WW-4 his brother Kewal Krishan was examined on 12th January, 1977 and Shri Parmod Kumar the workman himself was examined as WW-5 on 15th February, 1977 and the case of the workman was closed on the same day. The management moved an application for permission to adduce additional evidence on 18th February, 1977 which was dismissed by Shri M. L. Jain, the then Presiding Officer, on 12th May, 1977. The application for seeking permission to amend their written statement was also dismissed,—*vide* order, dated 13th May, 1977. On 13th May, 1977 the case was adjourned sine-die as per the order of the High Court. The workman filed an application for amending his claim statement for taking the plea of retrenchment on 31st January, 1978 in the light of the Supreme Court decision reported in A.I.R. 78 page 8 in case between Shambunath and the management of M/s Delhi Cloth and General Mills. While disposing of this application in his order the then Presiding Officer arrived at a finding that the facts were undisputed inasmuch as the management had not pleaded that the management offered the workman retrenchment compensation under section 25(F) of the Industrial Disputes Act and the authority of the Supreme Court if applicable would be taken into consideration and in view of the admitted facts on the record the law on the subject shall have full application and it was not considered necessary to allow the amendment. The workman was recalled for cross-examination on 22nd March, 1976 and his statement was also recorded on the same day as was directed by the Hon'ble High Court,—*vide* its order, dated 20th December, 1977. Shri C. S. Puri was examined as MW-3 on 12th April, 1978 and Shri K. L. Khurana as MW-4 on 6th May, 1978 and the management closed their case. The management again moved an application for summoning the file relating to the complaint made by the workman before the Labour Inspector, the same was rejected,—*vide* order, dated 6th May, 1978. About 15 to 16 adjournments for one reason or the other were granted and arguments were heard on 19th July, 1979 by my learned predecessor and the order was reserved but no order was announced. I heard the arguments on 20th March, 1981 and after going through the evidence oral and documentary available on the record carefully decide issuewise as under:—

ISSUE NO. 1:

The learned authorised representative of the management has drawn my attention towards Exhibit M-1 which is in respect of the previous record of the workman for the year 1971 and the same is uncontroverted by the workman. The workman according to Exhibit M-1 has put in 115 days attendance as against 194 days while 37 days are shown as unexcused absence. Exhibit M-Y is the order of termination which was contended to have been passed in accordance with the Certified Standing Orders contained in order 15(H). The authorised representative of the management Dr. Anand Parkash has interpretated article 15(H) of the Standing Orders that when no prior approval is given the workman shall be considered absent and the absence will be unexcused absence. He has further submitted that in order to discourage absentesisam the clause 15(H) has been inserted in the Stnading Orders which is necessary for carrying on the production work of the Industry and the words prior approval shall have no meaning if the approval is given subsequently. The workman had unexcused absence for three days earlier on 3rd August, 6th August and 8th August, 1971 and no explanation was given by the workman for these days and the fourth unexcused absence for 19th August, 1971 was done by him on his own peril. The management did not receive any leave application for 19th August, 1971 as was stated by MW-1 and as such the order, Exhibit M-Y of discharge was fully in accordance with the Certified Standing Order 15(H). Dr. Anand

Parkash has drawn my attention towards the authorities cited as under:—

(1) 1963 II L.L.J., page 638.

(2) 1967 II L.L.J., page 883.

(3) 1969 A.I.R., page 274.

By these authorities the learned representative has tried to show that equity and rule of common law are not applicable where action has been taken under the Certified Standing Orders which have the force of law by way of a deeming provision which brings fiction of law into action. Under the standing orders where there it is provided that after happening a contingency the workman/employee shall lose his lien on his appointment or shall be deemed to have abandoned his services or his services stand automatically terminated, the fiction of law is that the employee left his services. Termination is the positive act of the employer and here in the case in hand the workman has been discharged when he had four unexcused absence in one month and he was deemed to have left the services without giving due notice to the management. Dr. Anand Parkash has also drawn my attention to the rules of law laid down in the cases cited below:—

(1) 1970 I L.L.J., page 26.

(2) 1958 II L.L.J., page 326.

(3) 1972 I L.L.J. page 437.

Wherein it has been laid down that the Standing Orders Certified under the Industrial Employment (Standing Order) Act 1948 became part of statutory terms and condition of service between the industrial employer and his employees and that they will govern the relationship between the parties. The quesiton of intention as to whether a workman intended to abandon his services or not may be relevant in some cases for a finding of fact whether a workman has abandoned his services. But in cases where abandonment is to be infered from a given fact by a fiction of law question of intention would not arise. He has further argued that the Standing Orders are not merely an agreement but have the force of law and the valadity or invalidity of Standing Orders is not the subject-matter of dispute and the course cannot transgress its jurisdiction and adjudicate upon a matter not referred to it which shall be beyond the scope of reference. He has contended that as retrenchment has not been pleaded by the workman and the same was not open to him and the workman representative cannot be allowed to argue on this point. He has drawn by attention towards the authorities contained in cases cited below:—

(1) 1978, Volume 37 F.L.R., page 1.

(2) 1977, L.I.C., page 823.

(3) C.W.P., No. 1458, etc., etc., 1975 unreported.

The rule laid down in these cases is that the scope of reference cannot be expanded and where an amendment in the pleadings was refused than the parties cannot be allowed to argue on that plea which being outside the scope of reference. He further submitted that the retrenchment as given in the definition contained in section 2(OO) of the Industrial Disputes Act, means the termination by the employer of the service of a workman by which he stressed that the termination amounting to retrenchment should be a result of the positive action of the employer and it cannot take in its fold the termination as the result of the act of the employee as has been laid down in *Delhi Cloth and General Mills* v. *Shambunath case* reported in 1978 L.I.C. page 1581, Dr. Anand Parkash the learned authorised representative of the management has also pointed out the plea of *mala fide* taken by the workman in his claim statement but no evidence on this his been led by him nor any suggestion was put to the management witness in this regard. The workman has also build up a false case which becomes transparent for the reasons hat the workman has denied to have written application to the Labour Inspector which has been placed on file at page No. 142. The workman has made out a different story from his earlier story as given in application at page 142 of the court file and he has submitted that the first story which is in the form of a first information may be believed. As regard the objections taken during the course of arguments by

the workman representative he replied that the order of termination was in the nature of information to the workman and it was immaterial who so ever signed the same. The workman representative had contended that the power of attorney was executed by the Production Director in the year 1968 and he left the services of the company in the year 1970 and on this account the person who signed the order of discharge had not the proper authority to do so. He has also argued that the Punjab Sick Leave and National Holidays Act, 1965 and Factories Act were not relevant in the present case.

The learned representative of the workman Shri R. C. Sharma has drawn my attention towards the illegality of the termination order, Exhibit M-Y on the basis that it was signed by the Personal Manager who was not authorised to sign the same, the statements of WW-3 Dr. R. N. Rai, Exhibit W-10, the medical certificate issued by WW-3 and the prescription W-11, WW-4/A. the application for leave, statement of Dr. Ishwar Kaur WW-2, letter from the Doctor, E.S.I. Hospital at page 158 of the file. He has drawn my attention towards order 8(B), 8(M) and 8(F) of the Certified Standing Orders of the Company. From the statements of the workman witnesses WW-2, WW-3 and WW-4 and from the statement of the workman himself it is a proved fact that the workman had stomachache on the night of 12th August, 1971 and was under the treatment of Dr. R. N. Rai and an application of sickness was sent through his brother on 19th August, 1971 and after refusing the same to receive the workman went to the E.S.I. Hospital on 20th August, 1971 and obtained a medical certificate and submitted the same to the management but in the meanwhile the management struck his name from the workers muster-roll and did not accept the application for leave. The management acted under the clause 15(H) of the Standing Order. The workman representative argued that the clause 15(H) is illegal and is a nullity as it is self contradictory and also contravenes the other clauses of the Standing Orders which are contained in 8(F), 8(B) and 8(M).

According to this clause the workman who has unexcused absence for two days within any two months period will be given a warning letter and for seven days in any six months period will also be given a warning letter but when an employee has unexcused absence of four or more days in a month or four conjuctive days or more he shall be subjected to discharge and shall be deemed to have left the services. The unexcused absence has been defined as absence from work for which no prior approval has been given. The workman representative interprets this clause in the manner that the absence on the part of the workman when the approval has been refused by the management to him. Only in case of such defiance of the order of the management the workman shall be liable for punishment under this clause and not otherwise. If the application for leave submitted by the workman has not been received and no order of giving approval or withholding the same is passed then it cannot be said that prior approval has not been given. Procedure for sanctioning of leave has been laid down in clause 8 of the Standing Orders sub-clause B of this clause lays down that the amount of leave to be granted and the condition on which it is granted shall be in accordance with the terms of the existing legislation. In sub-clause F of clause 8 it is provided that the employee shall lose his lien on his appointment if he does not return within 8 days of the expiration of sanctioned leave and explains to the satisfaction of the authorities granting leave reasons for his inability to resume duty. Clause 15(H) cannot be read in isolation to other clauses and the same is in contradiction to clause 8(F) and 8(B). From 8(F) it is clear that the employee should be given the opportunity to explain his position in respect of the absence and his inability to resume the duty. As is clear from sub-clause B of clause 8 of the Standing Orders the leave shall be granted in accordance with the terms of the existing legislation, the workman representative argued that under rule 6 of the Punjab Industrial Sick Leave and National Holidays Act 1965, medical certificate is necessary for more than two days and as the workman was under the

treatment of E.S.I. Hospital from 20th August, 1971, onwards. Under section 73 of the E.S.I. Act the management is barred to terminate the services even under Certified Standing Orders, Mr. R. C. Sharma, the learned representative of the workman has contended that the workman assuming him to be absent could not be condemned unheard. Agreeing with the interpretation given by the workman representative of clause 15(H) of the Certified Standing Orders that the unexcused absence is the absence in defiance of the order for withholding approval to grant leave to the employee, the management is authorised to take direct action without calling for any explanation from the workman only in case of defiance. He has drawn my attention to the authority cited in 1978 L.I.C. page 518 where in it has been laid down that where there is a disputed document requiring interpretation the doubt must go to the weaker section that is the labour. The workman representative has further argued that sickness cannot be anticipated and no application for leave for sickness be submitted inanticipation of the same and as such no prior approval can be sought and only for the absence of one day the punishment given to the workman is harsh and is unwarranted. He has drawn my attention to the cases cited below:—

(1) 1973, II L.L.J., page 254 (S.C.).
(2) 1976, L.I.C., page 21.
(3) 1978, L.I.C., page 386.
(4) 1979, L.I.C., page 290.
(5) 1973 L.I.C., page 1530.

In all these cases the workman has remained absent for one year and more for the reason beyond the control of the employee but it has been held that the order of termination passed against the employee on the basis of this absence and in accordance with the Certified Standing Orders but without giving reasonable opportunity to the employee to explain and justify his absence was illegal and unjustified. The case of illness was also included in the circumstances which physically prevented the workman to attend to his work. The workman representative has also argued on the plea of retrenchment. He has drawn my attention towards the application seeking amendment in the claim statement for taking the plea of retrenchment and the order of my learned predecessor, dated 9th February, 1978 by which the then Presiding Officer has held that it was an undisputed fact that the management did not pay any notice pay or retrenchment compensation to the workman and also in view of the admitted facts on record the law will have its course. So it cannot be said that the workman had not taken the plea of retrenchment. Shri R. C. Sharma, the workman representative has drawn my attention to several decisions of Supreme Court and High Courts on this point, namely:—

(1) 1977, L.I.C., page 1695 (S.C.).
(2) 1976, I. L.L.J., page 476.
(3) 1976, L.I.C., page 1766.
(4) 1980, L.I.C., page 687.
(5) 1980, L.I.C., page 123.

Wherein it has been laid down that every termination is retrenchment except by way of dismissal. It has also been laid down that striking out of the name from the muster-roll amounts to termination further amounting to retrenchment and as no notice or notice pay or any compensation has been paid to the workman who was a permanent employee with the respondent and who put in three years of service and these facts are undisputed thereby isolating the mandatory provisions contained in section 25(F) of the Industrial Dispute Act. When the conditions contained in section 25(F) are not complied with than the order of termination becomes void *abinitio* and the workman shall be deemed to be in service as if no such order had been passed.

From the evidence of the parties, it is clear that the order, Exhibit M-Y was passed on the 19th of August. 1971 after the shift of the workman. It does appear from the facts that the management acted in haste to pass this order without waiting for the medical certificate from the E.S.I. Hospital which they knew was to be submitted on the next date. The management had abruptly terminated the services of the workman under the

grab of the contract of service in the form of clause 15(H) of the Certified Standing Orders and in fact the workman sent the application for leave through his brother on 19th August, 1971 accompanied by the medical certificate of the private medical practitioner and the medical certificate from the E.S.I. Hospital was to follow. In view of these facts it cannot be held that the workman has abandoned his services or he is deemed to have left the services of the management. I also don't agree with the interpretation given by the authorised representative of the management of clause 15(H) of the Standing Orders while the interpretation given by the workman representative is more plausible and rational that this clause will be applicable only when the workman has not been given approval sought by him and he even then remains absent from work which is not the case of the workman. As it has been pointed out by the workman representative that the clause 15(H) is inconsistent with clause 8(F) governing the conditions of service of the employee and if they are inconsistant with each other then the provisions of the Act as contained in chapter 5(A) shall have the over riding effect and it is also a well-established rule of law that no punishment can be awarded without giving due and proper opportunity to the person against whom the punishment is meted out. The management representative has not been able to satisfy me that no such explanation was required under clause 15(H) of the Certified Standing Orders. Though I agree with the contention of the management representative that the Certified Standing Orders have the force of law and deeming provision take the form of fiction of law but that does not mean that it over rides the statutory provisions and which cannot be in view of clause 8(B) of the said orders. The arguments put forth by the management representative that the workman did not rebut the unexcused absence for three days in August, 71 and the fourth on 19th August, 1971 was done by the workman on his poini and without justifying his previous three absences during this month cannot be accepted as the same is against the facts as the workman had tried his best to get the absence excused by way of submitting an application for leave which was refused thereby bringing the workman under the clutches of the deeming clause of Standing Orders 15(H). I am, therefore, constrained to hold that the workman never abandoned his services on account of his having unexcused absence for four days as the management has tried to apply clause 15(H) to remove the workman from the services of the management and it is also apparent from Exhibit M-1 that the management could not have removed the workman under this clause without affording him the proper opportunity to defend himself and if it had been so the management could have terminated his services long before even in the month of January, 1971 when the workman has been shown to have four unexcused absence during that month and even in subsequent months also. Issue No. 1 is, therefore, decided against the management and in favour of the workman.

ISSUE NO. 2:

When issue No. 1 has not been proved and the same is decided against the management issue No. 2 needs no decision.

ISSUE NO. 3:

In view of my findings above in deciding issue No. 1 the order of discharge Exhibit M-Y amounts to the order of termination, and as every termination spells of retrenchment except by way of dismissal. The order, Exhibit M-Y cannot be termed as a discharge simplicitor as it has been passed on the same day on which the workman remained absent and was also to take effect from the same date and it also incorporates the word "your name has therefore been struck off from the workers muster-roll" which is an act of the management resulting in the termination of the services of the workman and hence is retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act. As the conditions which are precedent to retrenchment laid down in section 25(F) are not fulfilled which fact goes undisputed the order, Exhibit M-Y is, therefore, void and illegal and the same is, therefore, set aside.

The management representative has also drawn my attention towards the application of the workman, dated 24th August, 1971 submitted before the Labour Inspector, Ballabgarh Circle, but the workman had denied that he ever filed any such application. The management has placed on file the carbon copy of this application and also the photo copy along with the proceedings recorded by the Labour Inspector on the back of the same duly signed by the workman on each date of hearing. The management also moved an application for summoning of the record of the office of the Labour Inspector with respect to this application but the application was disposed of by order, dated 12th January, 1979 with the remarks that the file may be summoned if required during the course of arguments. From the bare perusal of the signatures appearing on the application and on the proceedings on the back of this application of the workman and from the other signatures on different documents on the file it is apparent that the workman filed this application and the workman was not admitting his signatures on the same. The workman is not admitting the signatures which infact are his signatures and as such he has not come with clean hands and loses the sympathy of the court. As far as the justification of the order of termination is concerned this act of the workman is not of much importance and does not materially affect his case adversely because the same has not been held illegal and unjustified on the ground whether the application for leave was made on 19th August, 1971 of on 20th August, 1971 but on other grounds mentioned here to before I, therefore, deviate from the normal rule of granting full back wages to the workman and only hold him entitled to 50 per cent of the back wages alongwith the reinstatement with continuity of service. The managemen has not been able to prove the fact of the workman being gainfully employed by any sufficient evidence. The onus to prove the factum of the workman being in gainful employment has not been discharged by the management. I give my ward in answer to the reference while returning the same in the above terms. The 22nd March, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

Endorsement No. 624, dated 22nd March, 1981.

Forwarded (four capies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 9(1)81-8 Lab/2876.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Milton Cycle Industries Ltd., Sonepat.

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD.

Reference No. 466 of 1978

between

THE WORKMEN AND THE MANAGEMENT OF M/S. MILTON CYCLE INDUSTRIES LTD., SONEPAT.

Present :—

Shri Chander Singh Saroha for the workmen.

Shri V. K. Diwan for the management.

AWARD

By order No. ID/SP/101/78/43829, dated 4th October, 1978, the Governor of Haryana referred the following dispute between the management of M/s. Milton Cycle Industries Limited, Sonepat and its workmen, to this Tribunal,

for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

> Whether the settlement dated 30th December, 1977 arrived between the workmen and the management was in order ? If not, to what relief the workmen are entitled in respect of the demand notice dated 24th July, 1978 served by the workmen (copy enclosed) through Milton Cycle Mazdoor Sangharsh Samiti?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 21st May, 1979 :—

(1) Whether the settlement is bad in law, illegal, invalid, inoperative, and not binding on the parties ?

(2) Whether the union is estopped from raising other demands involving financial liabilities ?

(3) Whether Milton Cycle Sangharsh Samiti, Sonepat has no *locus standi* to raise this industrial dispute ?

And the case was fixed for the evidence of the workmen, who examined Shri Subhash Chander as WW-1, Shri Suraj Bhan as WW-2, Shri Dharam Vir Panchal as WW-3 and Shri V. P. Singh as WW-4 and closed their case. Then the case was fixed for the evidence of the management, who examined Shri M. K. Jain, Joint Labour Commissioner, Haryana, Chandigarh as MW-1 Shri R. D. Gupta as MW-2 and closed their case. Arguments were heard. Now I give my findings as follows :—

ISSUE NO. 1 :

WW-1 stated that a demand notice was given to the management on 5th August, 1977. Sarvshri Parbhu Dayal, Dharam Pal Pathak and Ram Ashish were authorised to pursue the demands. Some demands were settled on 20th September, 1977 while others were kept for consideration for a week. The management got a settlement on 30th December, 1977. The workmen who entered this settlement were not authorised by the workmen. Thereafter, they formed a union on 24th July, 1978. The union gave a demand notice challenging that settlement on 24th July, 1978. The management thereafter suspended the office-bearers of the union. The persons entering into the settlement were not office-bearers of the union. In cross-examination he stated that settlement dated 20th September, 1977 was entered into in the presence of Smt. Sushma Swaraj and Dr. Mangal Sain and some others whom he did not know. Therefore, cannot say if Labour Officer, Joint Labour Commissioner and Labour Commissioner were also there. He himself was an ordinary member of Milton Cycle Sangharsh Samiti. The settlement was arrived at through the intervention of the Government. He did not know if it was mentioned that Shri M. K. Jain, Joint Labour Commissioner, Haryana shall proceed further on the remaining unsettled demands. He did not know the terms of the settlement dated 30th December, 1977. He admitted that Shri Rajinder Singh, Hira Lal, Ram Kumar, Sukhbir Singh, Suresh Kumar, Raghu Nath and Gurmail Singh were his co-workmen. He further stated that on 30th December, 1977 there was no organisation named Milton Cycle Mazdoor Sangh. The workmen of the factory were forced to sign white papers. From January, 1978, the workmen who were getting less than Rs. 205 as their wages started receiving such amount. After the first settlement there was an increase of Rs. 15 making it to Rs. 185, whereas later on it was raised to Rs. 205. He denied the suggestion that wages were revised to Rs. 205 in consequence of settlement dated 30th December, 1977. WW-2 stated that demand notice dated 5th December, 1977 was settled on 20th September, 1977. Another settlement dated 30th December, 1977 was made with workmen who had no authority.

They got letter of authority signed by workmen with the help of the management. There was no registered union in the factory at that time. Milton Cycle Mazdoor Sangharsh Samiti was registered on 24th July, 1978 which gave the present demand notice. In cross-examination he stated that remaining demands were decided in settlement dated 20th December, 1977. He further stated that he had not signed any paper though force was extended to him. He did not make any complaint to any body about the force. He could not tell if the settlement dated 20th September, 1977 and 30th December, 1977 were arrived at through conciliation proceeding and that Shri M. K. Jain, Joint Labour Commissioner and Chief Conciliation Officer, Haryana had intervened in the settlement. WW-3 corroborated the statement of WW-1 and WW-2. WW-4 stated that first settlement Ex. W-A was signed in the presence of Smt. Sushma Swaraj, the then Labour Minister and Dr. Mangal Sain, the then Industries Minister. No other meeting was ever held. Some days thereafter he learnt that some personnel of the management were obtaining signatures of the workmen under force. He gave telegram on 24th December, 1977 and letter Ex. W-B on 26th December, 1977. Another letter Ex. W-1 was sent by him. Settlement Ex. W-C was signed by unauthorised persons. Out of the signatories of W-C Sarvshri Hira Lal, Ram Kumar, Sukhbir Singh and Sudesh Kumar have left the services of the factory. Out of the remaining three Sarvshri Rajinder Singh, Raghu Nath and Gurmail Singh, none was with them. They had registered trade union with 500 workmen as its members. He stated that he was not present at the time of settlement dated 20th September, 1977. He did not know the venue of the meeting. He was also not present at the time of settlement Ex. W-C. The signatures of the workmen were obtained by force inside the factory as well at the houses of the workmen. He made complaints to the Conciliation Officer that signatures were obtained by force. He could not tell if he received benefits of Ex. W-C or not although he was in the employment of the management after that settlement.

MW-1 stated that there was a demand notice dated 5th August, 1977 sent by Milton Cycle Mazdoor Sangh, Sonepat. He held conciliation proceedings. A part settlement was arrived at on 20th September, 1977. He was also Chief Conciliation Officer of the State. Conciliation proceedings were held on 20th December, 1979 but no settlement could be arrived at because of differences between office-bearers of Milton Cycle Mazdoor Sangh. The workmen of the factory later on withdrew the letter of authority in support of demand notice dated 5th August, 1977 in the name of some officers of Milton Cycle Mazdoor Sangh. Instead they gave authority to bearers who signed the settlement dated 30th December, 1977 Ex. W-C. Original letter of authority given to him was Ex. M-1. In conciliation meeting this settlement was arrived at. At that time Shri O. D. Sharma, Labour Officer was also present. At the time of settlement no objection was raised before him, nor any complaint was received by him. Settlement dated 30th December, 1977 Ex. W-C bear his signatures. Both the settlements were fair and reasonable. In cross-examination he stated that there was no procedure for verification of signatures appended on the letter of authority. The then Labour Minister had called a meeting earlier to look into labour trouble in Atlas Cycle Industries. At the time of settlement Labour Minister was not present. Letter of authority Ex. M-1 was given to him by the representative of the workers which consists 29 sheets. Conciliation meeting was held on 20th December 1977 at Karnal. He admitted as correct that letter Ex. MW-1/1 was given to him MW-2 Shri R. D. Gupta stated that in 1977 he was Factory Manager in Milton Cycle Industries, Sonepat. A demand notice was given to the management on 5th August, 1977. The workers went on strike on 26th August, 1977. Negotiations were held on the demands in the presence of the Labour Minister and Joint Labour Commissioner. On 20th September, 1977 a settlement was arrived at in the presence of the Joint Labour Commissioner

which was Ex. W-A. It bears his signature. On the remaining demands settlement Ex. W-C was arrived at on 30th December, 1977, at Sonepat. It also bears his signatures. He did not force any of the workers to change his representative, nor obtained signatures on letter of authority. The police never entered the factory or used force against the workmen. Shri H. K. Relan, R. S. Chug, S. N. Kapoor and Sobti work in the factory. They never went collectively to force the workers to sign a particular letter of authority. On 20th September, 1977, there were 5-6 workmen at the time of settlement. He denied the suggestion that he forced the workmen to sign settlement dated 20th September, 1977 and 30th December, 1977.

The representative for the workmen argued that the settlement Ex. W-C was reached after lapse of the stipulated time of one week. It was without any authority. There were separate sheets forming letter of authority which did not inspire confidence. The settlement was not voluntary and it was not binding on the workers. He further argued that there was no authority to sign the settlement for three years. Complaints were made and telegrams were also given against the settlement. He referred 1959 AIR Madras 441 that Minister was not a Conciliation Officer. He also referred 1975 I LLJ 163.

On the other hand the representative for the management argued that the demand notice was given by Milton Mazdoor Sangh and settlement dated 20th September, 1977 was signed by the office-bearers of that union. After which the workmen withdrew their letter of authority and nominated some others to negotiate with the management. The impugned settlement was arrived at with the participation of Joint Labour Commissioner and was arrived at under section 12(3) of the Industrial Disputes Act. He further argued that the Joint Labour Commissioner was also Chief Conciliation Officer and the workmen have not alleged anything against him for entering into the settlement. He cited 1971 AIR Mysore page 22 in which it is held as under :—

> "Failure of conciliation proceedings — Management settling dispute with majority of workers after failure report — Although under Sec. 18(1) the settlement was binding on those who had directly agreed it, in view of the fact that the agreement covered all the demands originally made and that it was accepted by the majority of workers, the remaining minority could not be allowed to keep the dispute open."

He also cited 1962 II LLJ page 144 which states as under :—

> "A conciliation agreement in respect of common matters pertaining to the employees of the establishment though settled between one union and the management will be binding under S. 18(3) of the Act on the employees of the establishment irrespective of the fact that the other employees are not members of the union which signed the settlement or that they are members of some other union which was not a party to the settlement."

And also cited 1966 I LLJ page 503 in which it is held :—

> "It is open to the management to enter into a settlement with the union representing the majority of workmen and that such a settlement will bind the other union."

He laid emphasis AIR 1969 (S.C.) 1280 and argued that the settlement was binding on all the workers.

I have gone through the evidence and record and find that the demand notice

dated 5th August. 1977 was given by Milton Cycle Mazdoor Sangh Sonepat. Settlement was arrived at with the participation and intervention of the Chief Conciliation Officer MW-1 on 20th September, 1977. Remaining demands were also negotiated by him with the representatives of the workmen and the management and the settlement Exhibit W-C was arrived at. Shri O. D. Sharma Labour Officer Sonepat was also present. The workmen's witnesses have admitted that at the time of this settlement there was no union. It is also stated that they had withdrawn letter of authority. As regards signatories of the impugned settlement they held authority Exhibit M-1 which is a cyclostyle paper with signatures in English, Hindi and thumb marks. I have gone through Exhibit W-1 and W-B and W-2. These are from Shri Ram Ashish Singh General Secretary Milton Cycle Mazdoor Sangh Sonepat. In Exhibit W-2 it is written :—

> "That the management under instructions of the Labour Minister Haryana has forced the workers with the help of the police blank papers signed showing agreement of the workers with their so-called agreement etc."

The names of office-bearers also appear in it. It is into evidence that the first settlement was arrived at by the management and Milton Cycle Mazdoor Sangh at the intervention of the Chief Conciliation Officer though at one time the then Labour Minister and Industries Minister also held certain discussions. The present demand notice is from Milton Cycle Mazdoor Sangharsh Samiti which was formed after the settlement. I am of the considered opinion that there was some inter-union or inter-sectional rivalry of workmen which also appears from Exhibit W-2 because the second settlement was not arrived through Milton Cycle Mazdoor Sangh, therefore, it was a cause of resentment for the union. I find support of my opinion from Exhibit W-1 and other complaints. It is hardly to believe that the Labour Minister will direct the local police to get signatures of the workmen by force. It is also strange to note that out of about 300 signatories none appeared in the witness box to identify his signatures obtained by force. Even authorised representatives (i.e. signatories of settlement Exhibit W-C) did not appear to show anything against the settlement. There are certain benefits allowed to the workmen in the settlement. The settlement was for a period of three years i.e. up to 30th December, 1980. It was arrived at with the active participation of Shri M. K. Jain, Joint Labour Commissioner and Chief Conciliation Officer and Labour Officer Shri O. D. Sharma. It is under section 12(3) of the Industrial Disputes Act and I do not find any reason to disbelieve the version of Shri M. K. Jain, Joint Labour Commissioner Haryana and Chief Conciliation Officer. He has stated that the settlement is fair and reasonable.

For the above reasons, I find the settlement in order. This issue is decided against the workmen.

ISSUE NO. 2:

As per finding given on Issue No. 1 this issue needs no decision.

ISSUE NO. 3:

The management did not press this issue, hence this issue is decided against the management.

As per finding given by me on issue No. 1, the workmen are not entitled to any relief in this reference. I order accordingly.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.

Dated the 5th March, 1981.

No. 235, dated the 6th March, 1981.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana Faridabad.